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CARRIERS-LIABILITY FOR BAGGAGE WHERE PASSENGER IS NOT OWNER.—A travelling salesman in plaintiff's employ took passage on the defendant's line, checking his employer's sample trunks as his own baggage. A fire, the cause of which was unknown, destroyed the trunks in question. *Held,* that though the custom of accepting sample trunks as baggage waived any objection on that score, yet the carrier, having had no knowledge that the passenger was not the owner, was liable, as gratuitous bailee, only for gross negligence or willful misconduct. *Lusk* v. *Bloch* (Okla. 1917) 168 Pac. 430.

Modern American methods of checking baggage and of running separate trains for it have tended to modify the basic and established conception of baggage as a certain class of articles accompanying the owner incidental to his transportation. As a result it has been held that carriers are under an insurer's liability though the owner take a different train from that carrying the baggage, *cf. McKibbin* v. *Wisconsin Central R. R.* (1907) 100 Minn. 270, 110 N. W. 964, and even if he does not use his ticket at all. *Alabama Great Southern R. R.* v. *Knox* (1913) 184 Ala. 485, 63 So. 538. The requirement of ownership still persists however, and if the passenger is not the owner and the carrier is ignorant thereof, it is only liable as a gratuitous bailee, *Cattaraugus Cutlery Co.* v. *Buffalo Ry.* (1897) 24 App. Div. 267, 48 N. Y. Supp. 451, though a contrary doctrine and one which seems much more reasonable has arisen that ownership is immaterial if the articles in question are technically baggage or through waiver may be classed as such. *Lake Shore etc. R. R.* v. *Hochstim* (1897) 67 Ill. App. 514. A carrier may by accepting articles as baggage with knowledge that the passenger is not the owner, or by customarily doing so, waive the requirement of ownership and thereby assume an insurer's liability. *Ft. Worth R. R.* v. *Rosenthal Millinery Co.* (Tex. Civ. App. 1895) 29 S. W. 196. And similarly knowledge or custom may operate to effect a waiver of the fact that the articles are not, strictly, baggage, *Kansas City etc. Ry.* v. *McGahey* (1897) 63 Ark. 344, 38 S. W. 659. So, sample trunks, though not ordinarily included in the term baggage, *Haines* v. *Chicago etc. R. R.* (1882) 29 Minn. 160, 12 N. W. 447, may, through waiver, be classed as such. *Salleby* v. *Central R. R. of N. J.* (1904) 99 App. Div. 163, 90 N. Y. Supp. 1042. The court in the principal case takes judicial notice of the custom of carriers in that state to accept salesmen's sample trunks for carriage as baggage, and concludes therefrom that though they are to be regarded as baggage, yet since the carrier did not know that the passenger was not the owner, it is only liable as gratuitous bailee. It is submitted that the above custom should operate as a waiver of the ownership requirement as well, and that the carrier was therefore under an insurer's liability. *Cf. Ft. Worth R. R.* v. *Rosenthal Millinery Co., supra.*

CONSTITUTIONAL LAW—TAXATION—FOREIGN CORPORATIONS.—An Illinois corporation engaged in both local and interstate commerce in Texas where it had depots and warehouses was required to pay a franchise tax the amount of which was based on capital stock. *Held,* the tax is invalid. *Looney* v. *Crane Co.* (1917) 38 Sup. Ct. 85.

Though a state may not impose direct taxation on interstate commerce, *Galveston, Harrisburg, etc. Ry.* v. *Texas* (1907) 210 U. S. 217, 28 Sup. Ct. 638; *Oklahoma* v. *Wells, Fargo & Co.* (1911) 223 U. S. 298, 32 Sup. Ct. 218, it may tax intrastate commerce or the privilege

of engaging therein. *Ohio Tax Cases* (1913) 232 U. S. 576, 34 Sup. Ct. 372. Before *Western Union Tel. Co.* v. *Kansas* (1910) 216 U. S. 1, 30 Sup. Ct. 190, the Supreme Court seemed to hold that if the subject matter of the tax was within the power of the state, the tax was necessarily valid even though it might to a greater or less extent affect interstate commerce. *Pullman Co.* v. *Adams* (1903) 189 U. S. 420, 23 Sup. Ct. 494; *Allen* v. *Pullman Co.* (1903) 191 U. S. 171, 24 Sup. Ct. 39. But after this decision the ruling principle was that if the effect on interstate commerce was sufficiently serious the tax was invalid. *Pullman Co.* v. *Kansas* (1910) 216 U. S. 56, 30 Sup. Ct. 232; *Ludwig* v. *Western Union Tel. Co.* (1910) 216 U. S. 146, 30 Sup. Ct. 280; *Atkinson etc. Ry.* v. *O'Connor* (1912) 223 U. S. 280, 32 Sup. Ct. 216. Each case was viewed with reference to its own particular facts and definite rules were avoided. See *Baltic Mining Co.* v. *Massachusetts* (1913) 231 U. S. 68, 34 Sup. Ct. 15; *St. Louis etc. Ry.* v. *Arkansas* (1914) 235 U. S. 350, 35 Sup. Ct. 99; *Kansas City etc. Ry.* v. *Kansas* (1916) 240 U. S. 227, 36 Sup. Ct. 261. A domestic corporation engaged in combined local and interstate transportation was held subject to a tax measured by total capital stock, *Kansas City etc. Ry.* v. *Stiles* (1916) 242 U. S. 111, 37 Sup. Ct. 58, and a foreign corporation engaged in making local and interstate sales within the state was held subject to a tax measured by total capital stock when the statute provided the tax did not exceed two thousand dollars. *Baltic Mining Co.* v. *Massachusetts, supra.* The instant case shows that there must be some maximum or a tax on foreign corporations measured by total capital stock will be invalid. The opinion of the court seems inconsistent with the reasoning of the former opinions in that it expressly eliminates any question of the degree of interference with interstate commerce. It makes no attempt to point out particular facts which give rise to the decision, as was done in *Baltic Mining Co.* v. *Massachusetts, supra,* and *St. Louis etc. Ry.* v. *Arkansas, supra,* but, without distinguishing the character of the business, the nature of the property owned by the respondent within the state, or the measure of the tax, from those elements in *Western Union Tel. Co.* v. *Kansas, supra,* and the cases following it, the court blindly follows those decisions and lays down the broad proposition that a franchise tax on any foreign corporation engaged in local and interstate business cannot be measured by the total capital stock with no maximum limitation, because such tax would burden interstate commerce and would take property without due process of law.

CONTRACTS—AWARD AND ARBITRATION—EFFECT OF FRAUD.—The contract between the plaintiff and the defendant, a contractor, provided that the plaintiff's chief engineer was to be the "final umpire in all questions arising under the contract." The grand division engineer of the plaintiff, a brother-in-law of the defendant, increased to a large extent the estimates of the division engineer, and fraudulently managed to have the chief engineer, who was ignorant of the increases, approve them. The plaintiff paid the defendant and on discovering the fraud sued for the amount overpaid. *Held,* Though it was impossible to charge the defendant with fraud with sufficient directness, yet the plaintiff could recover the amount overpaid, since the award of the chief engineer having been procured through fraud, was not binding. *Atchison, T. & S. F. Ry.* v. *West* (Cal. 1917) 167 Pac. 868.

Although the courts have finally come to allow awards of arbitrators